

ELECTION CAMPAIGN WORKERS

Pursuant to Section 636 of the California Unemployment Insurance Code, services performed for a candidate for public office or for a committee in connection with an election campaign are excluded from employment for purposes of unemployment insurance (UI), employment training tax (ETT), and state disability insurance (SDI).^{*} However, such services are considered to be in covered employment for purposes of personal income tax withholding (PIT).

Services of a political nature that are performed for an employer during a period of time when these services are not directed toward an election are not excluded from employment.

Employers should be aware that the current federal law does not exclude from employment services performed for a candidate for public office or for a committee and in connection with an election campaign. Thus, there would be no offset against taxes owed pursuant to the Federal Unemployment Tax Act. (Contact Internal Revenue Service for federal tax purposes.)

Who is a candidate for public office?

Generally, a candidate for public office is an individual who seeks nomination for or election to a partisan or nonpartisan office at any primary, general, or special election conducted within this state. "Candidate" also includes any officeholder who is the subject of a recall election.

What is a committee?

A committee is any person or combination of persons who directly or indirectly receives contributions for the purpose of influencing or attempting to influence the action of the voters for or against the nomination or election of one or more candidates, or the passage or defeat of any measure, including any committee or subcommittee of a political party, whether national, state or local, if the person or group of persons:

- (1) Receives contributions totaling one thousand dollars (\$1,000) or more in a calendar year; or
- (2) Makes independent expenditures totaling one thousand dollars (\$1,000) or more in a calendar year; or

- (3) Makes contributions totaling ten thousand dollars (\$10,000) or more in a calendar year to or at the behest of candidates or committees.

What does "in connection with an election campaign" mean?

"In connection with an election campaign" means service directly related to a specific campaign, even if performed after the election, but in no case after the last payment for campaign expenses.

Workers who perform services for organizations in connection with raising funds, recruiting supporters or attempting to influence legislation on an ongoing basis are not performing services in connection with an election campaign. For example, an organization formed with the broad purpose of preserving the environment may engage in a variety of these and similar activities. Services of employees working for such an organization are not excluded from subject employment, because the services are not performed in connection with a specific campaign.

Who is an employee?

An employer-employee relationship exists when an employer has the right to exercise control over the manner and means by which an individual performs his or her services. The right of control by the employer, whether or not exercised, is the most important factor in determining the relationship. The right to discharge a worker at will and without cause is strong evidence of the right of direction and control. If it cannot be readily determined whether the person who hires the worker has the right to direct and control the manner and means of accomplishing the work, the following factors will be taken into consideration:

- (1) Whether or not the one performing the services is engaged in a separately established occupation or business.
- (2) The kind of occupation, with reference to whether, in the locality, the work is usually done under the direction of a principal without supervision.
- (3) The skill required in performing the services and accomplishing the desired result.

^{*}Includes Paid Family Leave (PFL) beginning January 1, 2004.

- (4) Whether the principal or the person providing the services supplies the instrumentalities, tools, and the place of work for the person doing the work.
- (5) The length of time for which the services are performed to determine whether the performance is an isolated event or continuous in nature.
- (6) The method of payment, whether by the time, a piece rate, or by the job.
- (7) Whether or not the work is part of the regular business of the principal, or whether the work is not within the regular business of the principal.
- (8) Whether or not the parties believe they are creating the relationship of employer and employee.
- (9) The extent of actual control exercised by the principal over the manner and means of performing the services.
- (10) Whether the principal is or is not engaged in a business enterprise or whether the services being performed are for the benefit or convenience of the principal as an individual.

Another consideration relative to employment is whether or not the worker can make business decisions that would enable him or her to earn a profit or incur a financial loss. Investment of the worker's time is not sufficient to show a risk of loss.

The numbered factors above are evidence of the right to control. These factors are described more fully in Section 4304-1 of Title 22, California Code of Regulations. A determination of whether an individual is an employee will depend upon a grouping of factors that are significant in relation to the service being performed, rather than depending on a single controlling factor.

ADDITIONAL INFORMATION

For additional information regarding election campaign workers, you may visit the nearest Employment Tax Office, listed in the California Employer's Guide (DE 44) and on our Web site at **www.edd.ca.gov/taxrep/taxloc.htm#taxloc**. You may also call us toll-free at 1-888-745-3886.

Speech and hearing impaired persons can reach us at 1-800-547-9565.

Equal Opportunity Employer/Program. Auxiliary services and assistance available to persons with disabilities.